ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
	)	CS Docket No. 95-61
Annual Assessment of the Status	)	
of Competition in the Market for	)	
the Delivery of Video Programming	)	

REPLY COMMENTS OF CABLEVISION SYSTEMS CORPORATION

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Cablevision Systems Corporation ("Cablevision"), by its attorneys, hereby submits these reply comments in connection with the above-captioned proceeding.[1/]

INTRODUCTION AND SUMMARY

The Commission's Notice of Inquiry seeks empirical data regarding the status of, and prospects for, "competition in the market for the distribution of video programming."[2/] In response to the Notice, a number of parties have provided impressive evidence of the rapid growth of competition in the market for multi-channel video programming services.[3/] Some commenters, however -- most notably CAI Wireless ("CAI") and Liberty Cable ("Liberty") --

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1/ In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 95-61, released May 24, 1995 ("Notice" or "NOI").

2/ Id. at ¶ 6.

3/ See e.g., Comments of Wireless Cable Association International, Inc. at 2-5; Motion Picture Association of America Comments at 2-10; Satellite Broadcasting and Communications Association of America Comments at 2, 8-9, 13-14; National Cable Television Association Comments at 4-18; DIRECTV Comments at 2.

have used this NOI as an occasion to recycle old complaints, lob meritless accusations, and plea for special favors. The Commission's task in this proceeding is to assess the status of competition, not to promote the narrow agenda of particular competitors that seek to improve the market value of their companies by gaining special government preferences.

In its comments, CAI Wireless recycles arguments presented in a program access complaint filed earlier this year, which alleged that Cablevision unlawfully refused to deal with CAI's video dialtone programmer, Connecticut Choice Television (CCT). The Commission's video dialtone policy framework is designed to give programmers the opportunity to provide their services directly to end users. Nothing in the Cable Act or the Commission's rules require a potential video dialtone programmer-customer to sell its service to another programmer-customer on the platform. In this instance, CAI's complaints of anti-competitive conduct are particularly hollow, since its programmer, CCT, is attempting to solidify its position as the anchor programmer on the video platform of the Southern New England Telephone Company (SNET).

In a similar vein, Liberty Cable attempts to use this proceeding to further its own narrow, parochial agenda, which is inimical to the objective of fair competition. To this end, Liberty seeks to persuade the Commission to take steps that would discourage the use of bulk rates by cable operators providing service to MDUs, force operators to involuntarily transfer to Liberty internal MDU wiring constructed and deployed at operator expense, and shrink public comment opportunities in connection with the issuance of 18 GHz licenses and video dialtone authorizations. The Commission should disregard the policy prescriptions contained in Liberty's comments, all of which would frustrate the goal of full and fair competition.

I. CAI WIRELESS HAS FAILED TO RAISE ANY ISSUES THAT ARE RELEVANT TO THIS PROCEEDING

In its comments, CAI Wireless does nothing other than to restate the issues presented in a program access complaint filed against Cablevision and its programming affiliates, Rainbow Programming Holdings, Inc., SportsChannel New England, and SportsChannel New York, that is now pending before the Commission. In response to that complaint, the parties filed an Answer that fully and completely refutes the meritless claims raised by CAI Wireless, and Cablevision will not restate its arguments here.[4/] CAI's comments reveal nothing new about its dispute with Cablevision.[5/] The Program Access Rules[6/] were not intended to extend to video dialtone. To do so, given the inherent channel capacity limitations of systems that SNET and other LECs are presenting as video dialtone platforms, would have the effect of muting Cablevision's own role as a speaker via video dialtone, while mandating that Cablevision's content be passed to the anchor programmer that caused the channel capacity problem to occur. Video dialtone is premised upon non-discrimination.[7/] a principle ignored by CAI and its

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4/ See In the Matter of CAI Wireless Systems, Inc., and Connecticut Choice Television, Inc. v. Cablevision Systems, Inc., Rainbow Programming Holdings, Inc., SportsChannel New England, and SportsChannel New York, Answer, filed April 3, 1995 ("Cablevision Answer").

5/ CAI's remarks about Madison Square Garden Network are misplaced. It is Cablevision's firm intent that Madison Square Garden Network comply with all applicable provisions of the Cable Act and the Commission's Rules.

6/ 47 C.F.R. Subpart O, "Competitive Access to Cable Programming," §§ 76.1000 through 76.1003 ("the Rules").

7/ See, e.g., Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, 7 FCC Rcd 5781, 5787 ¶ 10, 5797 ¶ 29, 5810-11 ¶ 57 (1992), aff'd in part and modified in part, 10 FCC Rcd 244 (1994), appeal pending sub nom. Mankato Citizens Telephone Company v. FCC, No. 92-1204 (D.C. Cir. Sept. 9, 1992); Telephone Company-

(continued...)

strategic partner, SNET. In fact, CAI's position directly undermines the Commission's video dialtone rules and policy.[8/]

CAI's attempts to bolster impermissibly for itself an anchor programmer position on the Southern New England Telephone Company ("SNET") video dialtone trial are well-known to the Commission. Cablevision brought this matter to the Commission's attention as part of its Answer to CAI's Program Access Complaint,[9/] and the Connecticut Department of Public Utility Control has recently noted that the relationship between CAI's affiliate, Connecticut Choice Television (CCT), and SNET could be construed to violate the Commission's prohibition against anchor programmers.[10/] Thus, CAI's complaints ring especially hollow in light of its efforts to obtain and solidify an anchor programmer position on SNET's video dialtone trial.

[7/] (...continued)
Cable Television Cross Ownership Rules, Fourth Further Notice of Proposed Rulemaking at ¶ 17, FCC 95-20 (rel. Jan. 20, 1995). See also Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 10 FCC Rcd 244 (Reconsideration Order) at 259 ¶ 31.

[8/] Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, 7 FCC Rcd 300 (1991); recon. 7 FCC Rcd 5069 (1992); aff'd NCTA v. FCC, 33 F.3d 66 (D.C. Cir. 1994). The Commission defines "video dialtone" as the provision of a basic common carrier platform with sufficient capacity to accommodate multiple video programmers on a non-discriminatory basis.

[9/] Cablevision Answer at 20-21 ¶¶ 39-42.

[10/] See Application of The Southern New England Telephone Company for Approval to Trial Video Dial Tone Transport and Switching, Docket No. 95-03-10, Decision (released June 30, 1995) at 14. See also In the Matter of the Application of The Southern New England Telephone Company, W-P-C 7074, Reply of Cablevision Systems Corporation and the New England Cable Television Association to the Southern New England Telephone Company's Opposition to Petitions to Deny, July 21, 1995, ("Cablevision/NECTA Reply") at 7-17.

According to the Commission's rules, every programmer on SNET's video dialtone platform must be treated in the same manner. It is clear, however, that CAI's programming affiliate, CCT, has been afforded privileged access to SNET's video dialtone platform.[11/] In addition, the Commission's video dialtone policy framework also requires that every programmer-customer be allowed, if it chooses, to program directly to the viewer.[12/] Nothing in the Cable Act requires Cablevision to assist either SNET or CAI in their effort to solidify, in direct violation of FCC rules, the anchor programmer position they seek to create.

CAI has failed to demonstrate that application of the program access provisions of the 1992 Cable Act to video dialtone is consistent with Congressional intent or the Commission's video dialtone model. Congress certainly did not intend for the program access provisions of the Cable Act to enable any competitor to gain an advantage over a competing programmer on the same facility. The Commission would be well-advised to recognize the extent to which CAI seeks to use this proceeding to argue its untenable position and further entrench its anti-competitive position as a video dialtone anchor programmer.

11/ See id.

12/ Nevertheless, Rainbow has been denied access to SNET's video dialtone trial. See Cablevision Answer.

II. THE COMMISSION SHOULD IGNORE LIBERTY CABLE'S PLEAS FOR SPECIAL TREATMENT

In typical fashion, Liberty Cable has sought to persuade the Commission that its failure to obtain service contracts in some multiple dwelling units (MDUs), the resistance to its efforts to tamper with or take over cable operator property, and the objections to its unlawful practices filed by cable companies are the product of a nefarious scheme designed to thwart competition. Unsurprisingly, Liberty's proposed "solutions" to these non-existent problems would have the effect of hampering the competitive viability of cable companies, forcing cable operators to relinquish their property, and shielding Liberty's unlawful practices from public scrutiny. The Commission should resist Liberty's transparent effort to further tilt the competitive playing field in its favor.

First, Liberty baselessly asserts in its comments that "to the best of Liberty's knowledge," one of Cablevision's New Jersey system is offering bulk rate discounts "only to customers in buildings considering Liberty's service . . . ."[13/] Cablevision is in no way engaged in the selective offering of bulk rate discounts only to MDUs considering Liberty's service. Instead, Cablevision offers its bulk billing proposal to all MDUs of like size and is in full compliance with the Commission's rules on this matter.[14/] The crux of the Commission's bulk rate rules is the requirement that such rates be offered uniformly to all MDUs of a similar

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13/ Liberty Cable Comments at 9-10.

14/ See 47 C.F.R. § 76.984; Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Third Order on Reconsideration, MM Docket No. 92-266, 9 FCC Rcd 4316, 4325-27 ("Third Recondiseration Order"); In the Matter of Comcast Cablevision of Tallahassee, Inc., DA 95-1561, released July 17, 1995, at ¶¶ 20-22.

size with contracts of a similar duration, and that variances in such rates be cost-justified.[15] Cablevision's bulk rates are offered in full accord with these rules.

Likewise, Liberty's claim that the Commission's rules do not provide adequate guidance regarding the circumstances under which cable operators may offer bulk rates is equally without foundation.[16] The Commission's rules provide more than adequate guidance by clearly stating that differences in an operator's bulk rates must be cost-justified. Liberty's efforts to prod the Commission into writing more detailed rules than those which are already provided,[17] is nothing more than an effort to hamper the ability of cable operators to use bulk rates in order to compete fairly and effectively.[18]

Second, Liberty's comments rehash its efforts to expand the definition of "home wiring" in MDUs. As Cablevision has already detailed in a letter filed with the Commission earlier this year, Liberty's efforts to encompass MDU hallway wiring within the definition of "home wiring" should be rejected on both statutory and policy grounds.[19] In effect, Liberty is seeking to confiscate internal distribution plant that is constructed and deployed at cable operator expense -- e.g., MDU hallway wiring and lockboxes -- in order to avoid the costs of having to

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15/ See id.

16/ Liberty Cable Comments at 20.

17/ See Liberty Cable Comments at 20-21.

18/ See Third Reconsideration Order, 9 FCC Rcd at 4325-26 (noting that "cable operators are not prevented from meeting competition" so long as an operator's bulk rates are offered in a uniform manner to similarly situated MDUs).

19/ See Letter of February 1, 1995 from Howard J. Symons to William F. Caton re. Joint Petition for Rulemaking to Establish Rules for Subscriber Access to Cable Home Wiring for the Delivery of Competing and Complementary Video Services (RM-8380), ex parte filing ("Home Wiring Letter").

invest in its own distribution facilities within MDUs. Such a proposal is rife with potential technical, safety and maintenance problems,[20] and is unnecessary,[21] inequitable,[22] beyond the Commission's statutory authority,[23] and directly contrary to the goal of promoting two-wire, broadband telecommunications competition.[24] Liberty's attempts to force cable operators

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[20] A substantial portion of the MDUs served by Cablevision in New York City, Long Island, and Boston utilize hallway wire molding for distribution of signals within the building to individual subscriber units. Requiring Cablevision to provide competitors with access to its hallway wire molding systems will create considerable confusion regarding responsibility for maintenance and repair. Service interruptions, CLI leakage, and unwanted signal ingress due to actions by competing maintenance personnel are likely to occur in some instances. The risk of unwanted signal ingress is particularly significant for Cablevision, due to its ongoing effort to expand the two-way capabilities of its systems. Id. at 3-4.

[21] In any MDU that contains a pre-existing wire molding distribution system constructed by a competing provider, Cablevision routinely installs a second distribution system, in order to protect the operational integrity of each provider's internal distribution infrastructure. There is simply no valid reason why competing providers such as Liberty cannot do the same thing.

[22] The proposal under discussion is patently unfair to cable operators that have borne the costs of installing and maintaining the distribution infrastructure within MDUs. They should not be required to relinquish control of an asset that they have invested in and subsidize the costs of entry into their business by competitors. In order to continue competing for distribution of video programming and other telecommunications services to a unit terminating service, the operator would have to spend additional capital to install inside wiring a second time to replace the cable turned over to its competitor. Home Wiring Letter at 4-6.

[23] Under the 1992 Cable Act, the Commission is only authorized to prescribe rules regarding post-termination of service disposition of "any cable installed by the cable operator *within the premises* of" subscribers. Cable Television Consumer Protection and Competition Act of 1992, P.L. No. 102-305, Section 16(d), 106 Stat. 1460 (1992), 47 U.S.C. § 544(i) (emphasis added).

[24] On a growing number of its systems, Cablevision is offering additional non-video services to subscribers, such as access to electronic data bases and telephony. In New York City and Yonkers, Cablevision's hallway wires in MDUs carry 750 MHz of capacity, which represents 200 MHz of additional capacity beyond that needed to distribute its video programming services, and thus enable the company to provide additional services to subscribers. Subscribers today have the ability to purchase on-line services such as Prodigy through Cablevision's wire in competition to the local exchange carrier. Thus, even if a subscriber decided to terminate cable service, the hallway wiring could still be used by Cablevision to deliver other (continued...)

to surrender control over their distribution wiring within MDUs simply reflects its continued efforts to enter the video distribution business on the backs of investments in infrastructure and programming by cable operators.[25/]

Third, Liberty has the audacity to characterize objections filed against its applications to obtain 18 GHz licenses as an anti-competitive practice,[26/] *while at the same time admitting that it has "failed to comply with certain FCC regulations governing the provision of microwave services."*[27/] It is apparent that the public notice procedures governing the issuance of 18 GHz licenses have helped to reveal violations of the Commission's rules by Liberty which might not otherwise have been brought to light. Under such circumstances, Liberty's complaint about those procedures constitute little more than an attempt to make it harder for the Commission to detect violations of its rules. Indeed, Liberty's persistent difficulties in conforming its conduct to the dictates of the Cable Act's rules and policies underscore the importance of the 18 GHz public notice procedures.

The Commission also should ignore Liberty's effort to characterize the Section 214 and other video dialtone review processes as "needless impediments." It is clear that the video dialtone review processes employed by the Commission have brought to light actual and potential

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24/ (...continued)
telecommunications services to subscribers, such as telephony, access to electronic data bases, home banking and other information services. See Home Wiring Letter at 7-8.

25/ Indeed, Cablevision was recently forced to file a lawsuit after Liberty intruded upon lockboxes without authorization and cut into Cablevision's conduit at one MDU in New Jersey.

26/ Liberty Comments at 6.

27/ Id. at 15.

practices by telcos that could thwart fair competition and harm telephone ratepayers.[28/] If anything, those review processes should be expanded, rather than "streamlined" in a manner suggested by Liberty. Here again, Liberty's policy prescriptions are simply designed to maximize its strategic position at the expense of processes that promote and protect fair competition.[29/]

[28/] See e.g., Cablevision/NECTA Reply at 7-33; Reconsideration Order at 309, ¶ 136 ("the Section 214 process is critical to our ability to ensure that video dialtone is implemented in a manner that best serves the public interest").

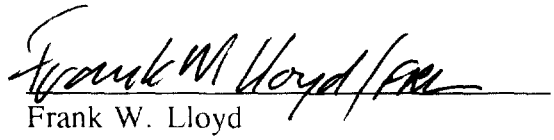
[29/] Likewise, the Commission should disregard Liberty's attack on State access-to-premises statutes. Liberty Comments at 21-23. These statutes serve the public interest by providing MDU tenants with the same right to obtain service from the local cable operator that is enjoyed by non-MDU residents of a franchise area.

CONCLUSION

As the comments of NCTA and others in this docket have demonstrated, the pace of competition in the multi-channel video programming distribution market is accelerating rapidly. The proliferation of choices for consumers in this market underscores the importance of preserving and strengthening a level competitive playing field. To this end, the Commission should pay little heed to the comments of CAI Wireless and Liberty Cable, which are designed to foster special treatment rather than fair competition.

Respectfully submitted,

CABLEVISION SYSTEMS CORPORATION



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CERTIFICATE OF SERVICE

I, Christopher J. Harvie, do hereby certify that a copy of the foregoing Reply Comments of Cablevision Systems Corporation was served of the following by first class mail, postage prepaid, this 28th day of July, 1995.

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